YONG JOO CHUAN v. TAN TECK CHIANG

[F.C. (Lee Hun Hoe C.J. (Borneo), Ong Hock Sim F.J. and George Seah J.) October 5 and November 12, 1977]

[Kuching — Federal Court Civil Appeal No. 30 of 1977]

Landlord and Tenant — Application to amend statement of claim — Premises required for occupation by owner — Whether tenancy determined by one year's notice to quit — Sarawak Rent Control Ordinance (Cap. 86), s. 15(1)(f).

The respondent had brought an action to recover possession of premises let to the appellant. The respondent applied to amend the statement of claim by adding particulars to show that the premises were required for occupation by himself. The application was allowed in the High Court and the appellants appealed.

Held, dismissing the appeal: the application should be allowed so that the action could proceed to trial. It would be futile to object to the amendment as the respondent could file a fresh action incorporating the proposed amendments.

FEDERAL COURT.

Patrick Tan for the appellants.

Matthew Chan for the respondents.

Ong Hock Sim F.J. (delivering the judgment of the Court read by Lee Hun Hoe C.J. (Borneo)); This is an appeal from the decision of Mr. Justice Mohd. Yusoff allowing respondent's application to amend his Statement of Claim by adding to paragraph 7 certain particulars as follows:—

"*PARTICULARS*

(i) That the plaintiff reasonably requires the ground-floor of the premises for occupation by himself;

(ii) That the plaintiff has been the owner of the premises since 1964; and

(iii) That, on or about June 22, 1971, the plaintiff gave the defendants not less than one year's written notice to quit from the ground-floor of the premises, a copy whereof is annexed hereto and marked 'B'."

It cannot be disputed that the action was filed in November 1972 and application to amend was made only on January 10, 1977 and allowed on January 11, 1977. In our view, objection to the amendment is futile in the sense that the respondent could withdraw his action and file a fresh one incorporating the proposed amendments. There was a discussion between counsel on January 3, 1977.

It would be prejudging the issue raised by the appellant in sub-paragraph (f) of paragraph 1 of his Memorandum of Appeal. For my part, I would say that I would not attempt to influence the trial judge when the action comes on for trial. The sole question is whether Exhibit 'B' a letter dated June 22, 1971 complies with section 15(1)(f) of the Rent Control Ordinance (Cap 86) which enacts:—

"(f) where the owner of the premises reasonably requires the same for occupation by himself or any member of his family or any person for whom he holds the premises in trust, and —

(i) there has been no change by purchase in the ownership of the premises since April 15, 1946; or

(ii) the tenancy has been determined by not less than one year's notice to quit and there has been no change by purchase in the ownership of the premises within one year next preceding the date of such notice."

That letter sought the kind co-operation of the appellants at the expiration of the term of the sublease. It would be for the court to determine whether by that letter "*the tenancy has been determined* by not less than one year's notice to quit." It may show an intention to take back possession after September 1972. Whether it is competent to so determine during the currency of a term may be in doubt. As a notice to determine, it should be clear, unequivocal and certain.

In the event we dismiss the appeal so that the action can proceed to trial. We would allow appellants' application to amend paragraph 3 of their Statement of Defence. Costs will be in the cause.

Appeal dismissed.

Solicitors: *Yong & Co.; Chan, Jugah, Wan Ullok & Co.*

LEE AH THAW & ANOR. v. LEE CHUN TEK

[F.C. (Lee Hun Hoe C.J. (Borneo), Ong Hock Sim and Seah J.) October 5 and November 12, 1977]

[Kuching — Federal Court Civil Appeal No. 16 of 1977]

Land Law — Caveat — Whether residuary beneficiaries of estate under will had power to lodge caveat — Whether entitled to or beneficially interested in land — Trust for conversion — Trustees Ordinance, 1949, s. 18 — Sarawak Land Code (Cap. 81), s. 173.

The appellants who claimed to be beneficiaries under the will of their deceased father had brought an administration suit against the executor and they had caveated the lands belonging to the estate. The respondent applied to have the caveat removed and the learned judge of the High Court made an order accordingly. The appellants appealed to the Federal Court.

Held, dismissing the appeal: the appellants as residuary beneficiaries, did not have a caveatable interest in the lands since the administration of the estate was incomplete and the residue was unascertained.

Cases referred to:-

(1) *Crombie* v. *Cooper* (1876) 24 Cr. 470; English and Empire Digest Vol. 48, p. 636.

(2) *Plumb* v. *McGannon* (1871) 32 U.C.R. 8; English and Empire Digest Vol. 48, p. 634.

(3) *Mahadevan & Anor.* v. *Patel* [1975] 2 M.L.J. 207, 208.

(4) *Lord Sudeley & Ors.* v. *The Attorney-General* [1897] A.C. 11.

(5) *Dr. Barnardo's Homes National Incorporated Association* v. *Commissioners for Special Purposes of the Income Tax Acts,* [1921] 2 A.C. 1.

(6) *Commissioner of Stamp Duties* v. *Livingston* [1964] 3 All E.R. 692.

(7) *Liew Siew Yin & Anor.* v. *Lee Pak Yin & Anor.* [1940] M.L.J. 108.

(8) *Guardian Trust and Executors Company of New Zealand Ltd.* v. *Hall* (1938) 57 N.Z.L.R. 1020.

(9) *Re Savage's Caveat* (1956) 75 N.Z.L.R. 118.

(10) *Re Parson* [1943] Ch. 12.

(11) *Commissioners of Inland Revenue* v. *Smith* [1930] 1 K.B. 713.

(12) *Corbett* v. *Commissioners of Inland Revenue* [1938] 1 K.B. 567.

FEDERAL COURT.

Patrick Tan for the appellants.

Ee Poh Teck for the respondents.

Lee Hun Hoe C.J. (Borneo): This appeal is against the decision of the learned judge in directing the

Registrar of the Kuching Land Registry to remove the caveat L.3633/1973 affecting seven parcels of land. The caveat listed 11 items covering fourteen parcels of land and was registered on June 20, 1973. Of the items one item (7) covers four parcels of land.

By an originating motion No. K.3 of 1973 dated April 10, 1976, respondent applied for removal of the caveat in respect of item (7). By another originating motion No. 7 of 1976 dated May 24, 1976 he applied for the removal of the same caveat covering the remaining ten parcels of land. Both motions were made under section 177(1) of the Land Code (Cap. 81) which enables any registered proprietor or any other person having a registered estate or interest in the estate or interest against which a caveat has been lodged, to apply to the High Court for an order to remove the caveat. At the hearing of the second motion No. K.7 of 1976 in the High Court, the parties agreed that the court was concerned with seven parcels of land as the other parcels were not registered in respondent's name but in the name of Lee Chuan Hong Co. Ltd. They also agreed to have the two motions heard together as the laws affecting both motions would be the same and the decision made on one motion would be binding on the other.

It would be helpful to set out certain facts which are not in dispute. Lee Boon Boh died on January 18, 1955 leaving a will by which he appointed respondent who was his partner and cousin to be the executor and trustee of his estate. The firm of Lee Chuan Hong Co. was owned by deceased who had 5 shares and respondent also 5 shares. The other 2 shares were held by Lee Cheng Leong who retired in 1957. After probate, respondent in his capacity as executor and trustee registered himself as proprietor of deceased's shares in the firm and continued running the business. In 1960 he converted the firm into a limited company under the style of Lee Chuan Hong Co. Ltd. Of the 50 shares in the limited company the estate would seem to be allocated 18 shares. Appellants were deceased's sons. They were to share the residue of the estate with their mother on the deceased's youngest son attaining 24 years of age in 1972. No distribution was made. Neither did appellants account for the estate. The three beneficiaries were thus not satisfied with the manner the estate was administered. They believe respondent was using the estate money to invest in properties for his own benefit. Consequently, the said caveat was lodged. Following this they initiated an action Civil Suit No. K.205 of 1973 against respondent praying for account and a declaration in respect of certain property.

In his affidavit respondent says that by reason of the caveat he has been embarrassed in the administration of the estate and also been hampered in his duties as an executor. He also says that the deceased's youngest daughter got married only in 1976 and the administration has not been completed.

By a summons in chambers dated January 17, 1976, the residuary beneficiaries sought and obtained an order from the High Court for the transfer of the 18 shares in the limited company to themselves. However, on appeal this court set aside the order and ordered an earlier trial of Civil Suit No. K. 205 of 1973. (See Federal Court Civil Appeal No. K. 66 of 1977). This is important because respondent contended that up to December 31, 1975 the estate owed the company $85,870.63 being money advanced to the various beneficiaries on the strength of the will. Any advance made has of course to be accounted for in the final distribution of the estate. Having proved the will by applying for probate, respondent administered the estate for some 18 years. Usually, an executor proves the will as soon as possible to forestall likely challenge to the validity of the will. It is, therefore, strange that respondent should turn round to question the validity of the will. A will once proved in solemn form becomes *res judicata* cannot afterwards, except for fraud, or the discovery of a later will, or some procedural irregularity, be impugned by persons who were parties or privy to the action in which it was established. It was contended that respondent was estopped from denying the validity of the will or his appointment. All these matters including the question whether there was sufficient residue of the estate to meet the debt would have to be decided.

The parties raised the question of a trust for conversion. In order to determine whether trust created by the will is such a trust, it is necessary to look at the will which is plain and short. It reads as follows:—

"I, Lee Boon Boh ( ) Hokkien Tabuan Road, Kuching, hereby revoke all former Wills and Codicils made by me and declare this to be my last Will.

1. I appoint my partner and cousin Lee Choon Teck ( ) to be executor and trustee of this my will.

2. I devise and bequeath all my real and personal estate and effects whatsoever and wheresoever unto my trustee upon trust:

(1) To pay my debts and funeral and testamentary expenses.

(2) To pay such sum to my wife Teo Siok Eng and my children begotten of her as my trustee deem reasonable for the maintenance of herself and children for such period as hereinafter provided.

(3). To pay my daughters Lee Ah Hiok and Lee Lan Hiok on their marriage the sum of $4,000 each, as dowry. On their marriages the maintenance of them shall then cease.

(4) To divide the residue between my said wife, my son Lee Ah Thau and my younger son Lee Ah Kian equally, on my said son Lee Ah Kian's attaining 24 years of age.

3. I declare that my trustee shall have the powers to appoint additional trustees at any time or times, and that no trustee of this my will shall be liable for any loss not attributable to his own dishonesty or to the wilful commission of an act known by him to be a breach of trust.

In Witness whereof I have hereunto set my hand this 17th day of January, 1955.

Interpreted to the said Lee Boon Boh in the Hokkien language by Stephen Yong and signed by the said Lee Boon Boh in the presence of us, present at the same time, who at his request, in his presence of each other have hereunto subscribed our names as witnesses.

Sgd. In Chinese
Lee Boon Boh.

Sgd. Tan Teng Kiang
(in Chinese)
9. Main Bazaar, Kuching
Labourer.

Sgd. S.K.T. Yong
Advocate
34, India Street,
Kuching.

Certified true copy
(Sgd.) Illegible
Chief Registrar, Supreme Court.
Checked: (Sgd.) Illegible
25.4.55."

It is not in dispute for the purpose of originating motion No. K. 7 of 1976 that the estate has some interest in those parcels of land mentioned in the motion. It is also not in dispute that some of the property were acquired after the testator's death. The contention of appellants in lodging the caveat is that they are beneficially interested in the parcels of land because the estate has a beneficial interest in those lands and they are the residuary beneficiaries under the will. Where an application is made for removal of the caveat the onus is on the caveator to satisfy the court of his interest in the land and that interest can be established by *prima facie* evidence. On the other hand, it is the submission of respondent that appellants have no right to lodge a caveat in respect of those lands as they have no interest in them for the simple reason that the trust under the will is a trust for conversion. Appellants are relying on their beneficial interest created by the trust under the will. They cannot lodge a caveat where there is a trust for conversion.

Appellants say there is no trust for conversion. For a trust to be a trust for conversion there must be a clear direction in the instrument creating the trust for such conversion. In support they cited *Garrow & Henderson* at page 478 and *Keeton on Law of Trusts* at page 158. Their submission is that the will does not create any trust for conversion. It merely provides for cash payments and division of the residue. They pointed out that the trust could be performed without resorting to any sale at all. In fact, respondent had made advances without affecting sale. Instead of selling, respondent as trustee acquired more lands after the testator's death. The advances were in fact wages as the beneficiaries worked for the firm and later the company. Further, there were fluid assets in the estate which were the shares in the partnership. They maintained that the doctrine of conversion should not apply to properties acquired out of trust funds after the testator's death. In answer, respondent says that appellants have no caveatable interest in those lands. Even if there were fluid assets the question to be considered is whether the fluid assets are sufficient to administer the estate and at the same time to run the business.

With respect, the learned judge was right to point out that apart from certain lands there was no evidence to show the other assets (e.g. money) of the partnership or what was the worth of the testator's share in the partnership. This of course only the executor and trustee must answer at the proper time as he has personal knowledge. In support of the contention that property acquired after the testator's death should not form part of the estate, they cited the Canadian cases of *Crombie* v. *Cooper*[1] and *Plumb* v. *McGannon.*[2] The evidence does not show which parcels of land were in existence at the time of testator's death and which parcels of land were acquired after the testator's death. Under such circumstances the learned judge was right to take the view that for the purpose of the motion there was no necessity to make a distinction between properties acquired before death and those acquired after death. Although he agreed that the will did not contain any express direction for sale, he did not agree that that meant there would be no conversion. The change of the firm into a limited company can be said to amount to a conversion. A trust for conversion will be implied when real and personal properties are given for division in such a manner as can only be effectuated by sale. (See *Halsbury's* Laws of England, 4th Edition, Volume 16, page 927, para. 1324).

Sections 4 and 5 of the Trustees Ordinance, 1949 (F.M. Ordinance 66 of 1949) empower a trustee to invest trust funds in his hands in certain securities. So that if the estate consists solely of fixed assets then if a trustee wishes to invest he is entitled to use his discretion to convert for the purpose. Hence, there is a trust for conversion. In effect, section 18(1) of the Ordinance empowers trustees, where they are authorised by the trust or by law to pay or apply capital money subject to the trust for any purpose or in any manner, to raise money, *inter alia*, by sale or conversion. Section 18(2) of the Ordinance makes this implied power exercisable regardless of what the trust instrument may say in respect of conversion except in the case of trustees holding properties for charitable purposes.

By making respondent executor and trustee of his will, it would seem that deceased must have contemplated that the business of the partnership would continue to be run by respondent and new property could be acquired for the benefit of the estate until distribution. For this reason the learned judge was of the view that the residue of the estate would include property acquired after testator's death. With respect, I cannot say he is wrong to come to the conclusion that the will gives the trustee the power to sell the lands and that the trust under the will would be a trust for conversion.

The question is whether the residuary beneficiaries of an estate which has certain interest in the lands are entitled to lodge a caveat on those lands. The case of *Mahadevan & Anor.* v. *Patel*[3] was cited to show that the court would protect a person who could show a caveatable interest in the lands. In that case respondent, the managing director of a company, made a loan to Ratnavale. It was the intention that there would be a charge over lands belonging to Ratnavale but the lands were not charged. Respondent lodged a caveat on the lands. When Ratnavale died, appellant sought to remove the caveat. In dismissing the appeal, this court held that both respondent and the company had a caveatable interest. It is true the Lord President stated the whole system of caveats was founded on the principle that they exist for the protection of alleged as well as proved interests. The facts in that case are completely different from the facts in the present case. There the interest was certain. The court was not called upon to determine whether the beneficiaries entitled to share in the residuary of an estate had any caveatable interest before the completion of the administration and the ascertainment of the residue. *Mahadevan's case,*[3] in my view, does not assist appellants in any way. Each case must be decided according to its particular facts.

The contention of appellants that they have caveatable "interest" in the property of the testator's estate because they are the beneficiaries and entitled to the residue of the estate cannot be supported since

the administration has not been completed. If, by their contention, they mean that they have certain equitable interest in any specific asset while the administration is incomplete then such contention would be in conflict with such high authorities as *Lord Sudeley & Others* v. *The Attorney-General;*[4] *Dr. Barnardo's Homes National Incorporated Association* v. *Commissioners for Special Purposes of the Income Tax Acts*[5] and *Commissioner of Stamp Duties* v. *Livingston.*[6] The testator's property was vested in his executor for the purpose of administration of his estate and no one else has any property interest on such property. It may seem incredible to deny to a residuary beneficiary any interest in those assets of an incomplete administered estate. It has been mistakenly assumed that for all purpose and at every moment of time the law requires the existence of two different kinds of estate or interest in those properties, the legal and the equitable. Lord Radcliffe made the position very clear in *Livingston's case,*[6] when he said at page 699:—

"There is no need to make this assumption. When the whole right of property is in a person, as it is in an executor, there is no need to distinguish between the legal and equitable interest in that property, any more than there is for the property of a full beneficial owner. What matters is that the court will control the executor in the use of his rights over assets that come to him in that capacity; but it will do it by the enforcement of remedies which do not involve the admission or recognition of equitable rights of property in those assets. Equity in fact calls into existence and protects equitable rights and interests in property only where their recognition has been found to be required in order to give effect to its doctrines."

I do not think they used the word "interest" in a general and popular sense. If they do so they would also fail. As Lord Radcliffe said in *Livingston's case*[6] at page 702:—

"It is not enough for this purpose to speak of an 'interest' in a general or popular sense. It is apt to recall what Lord Halsbury L.C., said on this point in his speech in the *Sudeley case.*[4]

'With reference to a great many things, it would be quite true to say that she had an interest in these New Zealand mortgages — that she had a claim on them: in a loose and general way of speaking no one would deny that was a fair statement. But the moment you come to give a definite effect to the particular thing to which she becomes entitled under his will, you must use strict language, and see what it is that the person is entitled to; because upon that in this case depends the solution of the question. It is idle to use such phrases as... that she had an 'interest' in this estate'."

Applying this test to the present case it is clearly not possible to say that appellants have any kind of "interest" in the lands since the administration is incomplete and the residue unascertained. What appellants have under the will is the right to sue the executor or trustee if he has not administered the estate properly. That right has been exercised by them and that is a pending suit.

Mention may be made of the case of *Liew Siew Yin & Anor.* v. *Lee Pak Yin & Anor.*[7] where the plaintiffs were residuary beneficiaries. The court held that irrespective of whether plaintiffs' interest was vested or contingent and although the land was subject to a trust for sale the plaintiffs were entitled to present a caveat. In my opinion this case was wrongly decided as the whole right of the property was in the deceased's personal representative and until the administration was completed and the residue ascertained the residuary beneficiaries could claim no interest in such property. S.K. Das the learned author of the Torrens System in Malaya (see page 339) is also of the view that *Liew Siew Yin's case*[7] cannot be supported either in principle or on authority. He referred to two New Zealand authorities, namely, *Guardian Trust and Executors Company of New Zealand Ltd.* v. *Hall*[8] and *Re Savage's Caveat.*[9]

In *Re Savage's Caveat*[9] McGregor J. considered that the caveator's claim was not to an interest in the land but merely a right to share in any surplus of the intestate estate after all liabilities had been discharged. Therefore, he held that the next-of-kin of an intestate registered proprietor had no interest in the land entitling him to lodge a caveat as required by section 137 of the Land Transfer Act, 1952. In *Hall's case*[8] the caveator was a residuary beneficiary under the will of his father. Before the administration of the estate had been completed he lodged a caveat against certain lands on the ground that he was beneficially interested in them. The executor was the registered proprietor of those lands. The New Zealand Court of Appeal held that until the residue of the estate had been ascertained, a beneficiary entitled to a share in such residue was not "entitled to or beneficially interested in" land forming part of that estate within the meaning of those words in section 146(b) of the Land Transfer Act, 1915 and ordered the caveat to be removed. Under section 173(a) of the Sarawak Land Code (Cap. 81) the appellants would also have to satisfy the court that they are "entitled to or beneficially interested in" the seven parcels of land against which they have lodged a caveat. The provisions of section 146(b) now section 137 of the Land Transfer Act, 1952 of New Zealand are in substance similar to section 173(a) of the Sarawak Land Code (Cap. 81). Both land laws are based on the Torrens system. There is no reason why in the absence of local authority the decisions of *Hall's case*[8] and *Re Savage's case*[9] should not be followed.

Appellants lodged a caveat under section 173 of the Land Code (Cap. 81). They must bring themselves within section 173(a) to show that they are the persons "entitled to or beneficially interested in" the seven parcels of land against which they have caveated "by virtue of any unregistered agreement or other instrument or transmission or of any trust express or implied, or otherwise howsoever". They claimed to have beneficial interest as residuary beneficiaries under the testator's will. It seems to me that the title of a beneficiary claiming the property of a deceased person, whether as devisee, legatee or next-of-kin, is not complete without some act on the part of deceased's personal representatives in giving effect to the gift or succession. Until such an act occurs a beneficiary has merely an inchoate, but transmissible right. Such an act usually takes the form of an assent or conveyance. See *Re Parson.*[10] A residuary legatee or devisee, however, has no claim to any of the deceased's estate in specie or to any part of that estate until the residue is ascertained. His right is to have the estate administered properly and then claim for the benefit. See *Barnardo's Homes National Incorporated Association* v. *Commissioners*

for Special Purposes of the Income Tax Acts;[5] *Commissioners of Inland Revenue* v. *Smith;*[11] *Corbett* v. *Commissioners of Inland Revenue*[12] and *Lord Sudeley & Others* v. *The Attorney-General.*[4] The right of a beneficiary claiming on a total intestacy is similar except that he takes under a statutory trust for sale and conversion. See the English Administration of Estates Act, 1925, section 33.

Just as Callan J. pointed out in *Hall's case*[8] at page 1026 that the applicability of these cases to the interpretation of the words "entitled to" and "beneficially interested" where they occur in section 146 of the Land Transfer Act is not weakened or affected by the circumstances that they are revenue cases so also the same is true in the interpretation of section 173(a) of the Land Code (Cap. 81). Appellants have merely shown that the lodging and continued existence of the caveat would be advantageous to them pending the civil suit. But they have failed to bring themselves within the meaning of section 173(a) of the Land Code (Cap. 81).

Although the learned judge was of the view that it would be expedient and preferable for the lands to be preserved pending the civil suit, he considered himself, with respect, quite rightly, bound to remove the caveat as appellants had established no interest until the administration had been completed and the residue ascertained. In *Barnardo's case*[5] Lord Atkinson made these observations at page 11 which seem to cover the situation in the present case: —

"The case of *Lord Sudeley* v. *Attorney-General* decided in this House conclusively established that until the claims against the testator's estate for debts, legacies, testamentary expenses, etc., have been satisfied, the residue does not come into actual existence. It is a non-existent thing until that event has occurred. The probability that there will be a residue is not enough. It must be actually ascertained."

So that appellants as residuary beneficiaries cannot possibly claim to have interest until the residue is ascertained. Whether there will be any residue must await the completion of the administration.

For reasons given, I would dismiss the appeal with costs. Deposit to respondent on account of taxed costs. Costs to be paid out of the estate.

Ong Hock Sim F.J. and **Seah J.** concurred.

Appeal dismissed.

Solicitors: *Yong & Co.; Ee & Lim.*

ONG AH MOY v. NGA AH FAN & ORS.

[F.C. (Lee Hun Hoe C.J. (Borneo), Wan Suleiman and Chang Min Tat F.JJ.) September 6 and November 23, 1977]

[Kuala Lumpur — Federal Court Civil Appeal No. 64 of 1977]

Probate and Administration — Originating summons — Application to transfer land to beneficiaries — Intervention by person claiming to be daughter — Disputed questions of fact — More convenient to try disputed questions of fact in action.

Practice and Procedure — Originating summons — Disputed questions of fact — More convenient for questions to be decided in action.

In this case an originating summons had been taken out for the transfer of the land belonging to the estate to the beneficiaries. The appellant sought to intervene and to be added as respondent on the contention that she was the lawful daughter of the deceased. The learned trial judge dismissed her application. She appealed to the Federal Court.

Held: there were disputed questions of fact to be resolved in this case and therefore the appellant should be allowed to commence an action, *inter alia* for the determination of her status.

FEDERAL COURT.

A. Ramanathan for the appellant.

V. Balendran for the respondents.

Chang Min Tat F.J.: This is an appeal from the dismissal with costs of an application to intervene in the administration of the Estate of Ng Chiew deceased and to be added as a respondent in the action. The respondents cited were the administratrix and the administrator of the said estate as well as the remaining beneficiaries.

The background is somewhat complex and it is perhaps necessary to refer to it in some detail. The subject matter was a piece of land held under E.M.R. 3962 for Lot No. 4775 in the Mukim and District of Kuala Kuantan. It devolved on Ng Chiew (the deceased) on the prior death of his wife, Soo Mooi, as the surviving husband and therefore the sole beneficiary. Actually Soo Mooi left another piece of land held under E.M.R. 3963 for Lot 4776 in the same Mukim and District. Both pieces of land were held to the extent of an undivided ½ share only. It would appear that the half share of one piece was exchanged for the half share of the other, so that effectively the assets consisted of the whole land under Lot 4775. It was the only asset.

By Originating Summons No. 57/1975, the administratrix and the administrator prayed for an order to transfer Lot 4775 to themselves and the other beneficiaries in equal shares. It is in respect of this application that the appellant sought to intervene and to be added as a respondent on the contention that she was a lawful daughter and a beneficiary, and therefore entitled to an equal share with the other children.

Soo Mooi died on October 9, 1961 at the age of 59 as disclosed in the certificate of death. Ng Chiew filed a petition for Letters of Administration, Petition No. 5 of 1962, as the lawful husband. In paragraph 2, he gave the names of the survivors:

(1) Ng Chiew, husband, aged 62 years.

(2) Nga Ah Fur (f), aged 20 years.